

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of: )

Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Florence and Killen, Alabama and )  
Lawrenceburg, Tennessee) )

MM Docket No. \_\_\_\_-\_\_\_\_  
RM No. \_\_\_\_

**RECEIVED**

JUL 16 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Mass Media Bureau

**CONTINGENT DISMISSAL AND WITHDRAWAL**

Big River Broadcasting Corp. ("Big River"), licensee of FM broadcast stations WXFL(FM), Channel 241A, and WQLT(FM), Channel 297C, both Florence, Alabama, and H-M-S Broadcasting Co. ("H-M-S"), licensee of FM broadcast station WDXE-FM, Channel 240A, Lawrenceburg, Tennessee, (collectively "Petitioners") by their respective attorneys and pursuant to Section 1.420(j) of the Commission's rules, hereby request the contingent dismissal and withdrawal of Petitioners' May 28, 1997, "Petition for Rulemaking" (the "Petition"); the contingent dismissal of Petitioners' December 23, 1997, "Petition for Reconsideration" (the "Reconsideration"), and the contingent termination of this proceeding. In support, the following is shown:

1. Big River and D. Mitchell Self Broadcasting, Inc. ("Self") have entered into an Agreement dated March 16, 1999, (the "Agreement") that, among other things, contemplates the grants of two pending applications filed by Big River and H-M-S for minor modification of WXFL and WDXE (BPH-960322IF and BPH-960322IB, respectively) (hereafter the "Two Applications"). Grants of those Two Applications would moot the Petition.

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2. Section 1.420(j) of the Commission's rules requires that "whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM . . . Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest . . . in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth" information by subsections (j)(1) through (j)(4) of Section 1.420. This section of the FCC's rules does not apply because neither Big River nor H-M-S will receive any consideration for the withdrawal and dismissal of the Petition. Instead, the Petition will be withdrawn and dismissed by the operation of law – it will become moot once the Commission approves the Agreement and grants the Two Applications. Nevertheless, Big River and H-M-S submit the attached Declarations that neither party nor its principals has received or will receive any money or other consideration in exchange for the dismissal or withdrawal of the Petition or the Reconsideration. These Declarations also establish that there are no other agreements, written or oral, other than the Agreement.

3. Accordingly, dismissal and withdrawal of the Petition and the Reconsideration is consistent with the provisions of Section 1.420(j) of the Commission's rules. Furthermore, approval serves the public interest by facilitating the resolution of litigation.

WHEREFORE, Big River and H-M-S request that the Commission dismiss and withdraw the Petition and the Reconsideration and terminate this proceeding, contingent upon approval of the Agreement and the grants of the Two Applications.

Respectfully Submitted,

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Attorneys for  
H-M-S BROADCASTING CO.

By Leonard S. Joyce  
Leonard S. Joyce

July 16, 1999

### DECLARATION

I, Jerry L. Phillips do hereby declare under penalty of perjury as follows:

1. I am President of Big River Broadcasting Corp. ("Big River").

2. Neither Big River nor its principals has received or will receive any money or other consideration in exchange for the dismissal and withdrawal of its May 28, 1997 "Petition for Rulemaking" or its December 23, 1997 "Petition for Reconsideration".

3. There is no oral or written agreement other than the Agreement dated March 16, 1999, by and among Big River, Clifton Broadcasting Co. and D. Mitchell Self Broadcasting, Inc.

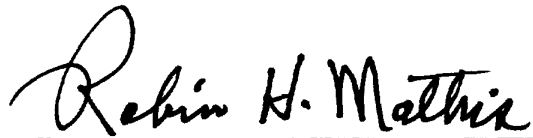
  
Jerry L. Phillips

Dated: 7 - 14 -, 1999

### DECLARATION

I, Robin Mathis do hereby declare under penalty of perjury as follows:

1. I am a General Partner of H-M-S Broadcasting Co. ("H-M-S").
2. Neither H-M-S nor its principals has received or will receive any money or other consideration in exchange for the dismissal and withdrawal of its May 28, 1997 "Petition for Rulemaking" or its December 23, 1997 "Petition for Reconsideration".
3. There is no oral or written agreement other than the Agreement dated March 16, 1999, by and among Big River Broadcasting Corp., Clifton Broadcasting Co. and D. Mitchell Self Broadcasting, Inc. H-M-S is not a party to that Agreement and has no contractual obligations of any nature thereunder.



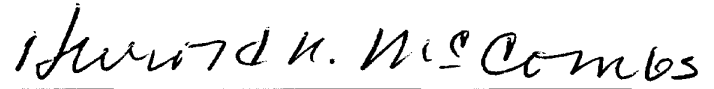
Robin Mathis

Dated: July 14, 1999

## CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be mailed by First Class mail, postage pre-paid, this 16<sup>th</sup> day of July, 1999, a copy of the foregoing "Contingent Dismissal and Withdrawal" to the following person:

Frank R. Jazzo, Esquire  
Fletcher Heald & Hildreth PLC  
11<sup>th</sup> Floor  
1300 North 17<sup>th</sup> Street  
Rosslyn, Virginia 22209-3801

  
Harold K. McCombs, Jr.